

## PART VI

### ESTABLISHING ENTITLEMENT UNDER 20 C.F.R. PART 410

#### C. TOTAL RESPIRATORY DISABILITY

##### 2. SECTION 410.422

Section 410.422, 20 C.F.R. §410.422, provides the general criteria for determining whether pneumoconiosis is totally disabling. This section may be used: 1) to prove pneumoconiosis is totally disabling when a miner cannot establish entitlement to the irrebuttable presumption of total disability due to pneumoconiosis found in Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), 20 C.F.R. §410.418; see Part VIII.B. of the Desk Book; or 2) to show the existence of a totally disabling chronic respiratory or pulmonary impairment for purposes of Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), 20 C.F.R. §410.414(b); see also *Van Scyoc v. Director, OWCP*, 2 BLR 1-875 (1980); *Brown v. Eastern Associated Coal Corp.*, 2 BLR 1-450 (1979). A determination of total respiratory disability may not be made under the Part 410 regulations unless pneumoconiosis is, or may be presumed to be, the impairment involved. 20 C.F.R. §410.422(b).

In determining whether pneumoconiosis in a particular case renders a miner totally disabled, the primary consideration must be given to the medical severity of the miner's pneumoconiosis. This requirement, when combined with the language of Section 410.426(a), has been interpreted to mean that to establish entitlement, the miner must prove that his pneumoconiosis is the primary cause of his total disability. *Stevens v. Director, OWCP*, 1 BLR 1-386 (1978). For a further decision of primary cause, see Part II.J. of the Desk Book. Consideration is also given to such other factors as the miner's age, education and work experience. 20 C.F.R. §410.422(c).

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